

ORDINANCE 2003- 014

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE 92-20, KNOWN AS THE UNIFIED LAND DEVELOPMENT CODE OF PALM BEACH COUNTY, FLORIDA AS FOLLOWS: AMENDING ARTICLE 15, TRAFFIC PERFORMANCE STANDARDS, TO REVISE THE DEFINITION OF THE TERM "PROJECT"; CREATING A NEW SECTION PROVIDING FOR PROJECT AGGREGATION; AMENDING LEVEL OF SIGNIFICANCE TABLE 2A-1; PROVIDING FOR INTERPRETATION OF CAPTIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, establishes the right and power of counties to provide for the health, welfare, and safety of the existing and future residents by enacting and enforcing land development and administrative regulations necessary for the protection of the public; and

WHEREAS, Palm Beach County Ordinance 92-20 provided for the adoption of the Unified Land Development Code on June 16, 1992, pursuant to Section 163.3202, Florida Statutes to further growth management requirements; and

WHEREAS, Chapters 125 and 163, Florida Statutes, grant authority to the Board of County Commissioners to adopt and enforce land development regulations within the unincorporated area of Palm Beach County; and

WHEREAS, pursuant to its authority established in its Home Rule Charter, the Board of County Commissioners is authorized to adopt and enforce countywide certain land development regulations concerning traffic performance standards; and

WHEREAS, the Board of County Commissioners has mandated that County staff conduct periodic reviews of the Unified Land Development Code to evaluate its various provisions and propose amendments to resolve new or outstanding issues and comply with the Comprehensive Plan, State Statutes and federal law; and

WHEREAS, the Citizens Task Force, sitting as the Land Development Regulation Commission, finds this amendment to be consistent with the Comprehensive Plan; and

WHEREAS, the Board of County Commissioners has determined that it is in the best interest of public welfare to amend the Unified Land Development Code as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:

PART 1. – Article 15, Traffic Performance Standards, Section 15(I) B- Definitions – is hereby amended as follows:

PROJECT - A land use or group of land uses, or land development activity or activities, or amendment thereto, which require the issuance of a DEVELOPMENT ORDER(s). All Public Civic Sites dedicated as part of a PUD or otherwise obtained by a governmental agency for public use shall be considered a PROJECT separate from the PUD for the purposes of reviewing the traffic impacts of the Civic Sites under this article.

PART 2. - Article 15, Traffic Performance Standards, is hereby amended by adding a new Section 15(III), as follows:

Section 15(III) PROJECT AGGREGATION

A. Applicability. This Subsection concerning PROJECT aggregation shall apply only to a LOT in existence on or after [the effective date the Ordinance creating this Subsection] or to a PROJECT with a DEVELOPMENT ORDER, an AGREEMENT, or both, approved after [the effective date of the Ordinance creating this Subsection] that is subject to a condition of approval that expressly provides for PROJECT aggregation. This subsection shall not apply to Developments located within a designated Community Redevelopment Area (CRA) or “urban infill” area as defined in section 163.3164, Florida Statutes.

B. Aggregation Criteria. Two or more land uses, or group of land uses, or land development activity or activities, or amendment(s) thereto (hereafter “Developments”), which require a DEVELOPMENT ORDER(S), represented by their owners or developers to be separate Developments, shall be aggregated and treated as a single PROJECT when each of the following criteria in paragraphs (1) through (3) is met.

1. The Developments generate more than 500 peak hour, two way trips when aggregated.

2. The same Person owns or has a significant legal or equitable interest or an option to obtain a significant legal or equitable interest in each Development.

A “significant legal or equitable interest” means that the same Person has an interest or an option to obtain an interest of more than 25% in each Development for the following types of interests: (1) a fee simple estate; (2) a leasehold estate of more than thirty (30) years duration; (3) a life estate, or (4) similar equitable, beneficial or real property interests in the Developments. A lessor’s interest in a lease of more than thirty (30) years is not a significant legal or equitable interest.

3. The Developments are part of a unified plan of development as evidenced by meeting at least two of the following:

a. There is a period of two (2) years or less between the issuance of the first building permit, or issuance of a DEVELOPMENT ORDER if the first building permit has not been issued, for one Development and subsequent traffic concurrency application for another

1 Development. This subparagraph shall apply only if any portion of the
2 parcels that contain the Developments: 1) presently share a common
3 boundary; or 2) previously shared a common boundary or existed as a
4 single parcel within two (2) years from the date the earliest of the
5 Developments received traffic concurrency approval. If the common
6 boundary will be the location of a future Major Thoroughfare, and the
7 right-of-way is to be dedicated as a condition of approval, this will not
8 be considered a common boundary for the purpose of this
9 subparagraph.

10 b. The Developments are physically proximate to one other. Two
11 or more Developments shall be considered “physically proximate”
12 when any portion of two or more Developments is contiguous or
13 separated by a road Right of Way or public canal easement of 140
14 feet or less.

15 c. A master plan or series of plans or drawings exists covering the
16 Developments sought to be aggregated which have been submitted to
17 a local general-purpose government, South Florida Water
18 Management District, local drainage or improvement special district,
19 the Army Corps of Engineers, the Florida Department of
20 Environmental Protection, or the Division of Florida Land Sales,
21 Condominiums, and Mobile Homes for authorization to commence
22 development. The existence or implementation of a utility's master
23 utility plan required by the Public Service Commission or general-
24 purpose local government or a master drainage plan shall not be the
25 sole determinant of the existence of a master plan which aggregates
26 Developments; or

27 d. The voluntary sharing of infrastructure that is indicative of a
28 common development effort or is designated specifically to
29 accommodate the Developments sought to be aggregated, except that
30 which was implemented because it was required by a local general-
31 purpose government, South Florida Water Management District, local
32 drainage or improvement special district, the Army Corps of
33 Engineers, the Department of Environmental Protection, the Division
34 of Florida Land Sales, Condominiums, and Mobile Homes, or the
35 Public Service Commission. “Sharing of infrastructure” means the
36 voluntary joint use by two or more Developments of internal roadways,
37 internal recreational facilities or parks, amenities, or water, sewage or
38 drainage facilities specifically constructed to accommodate the
39 Developments sought to be aggregated. Shared infrastructure does
40 not include:

41 i. Any joint or shared use of private or public infrastructure
42 specifically required under an established policy of general

1 applicability as set forth under a comprehensive plan adopted
2 pursuant to Chapter 163, Florida Statutes, an adopted local
3 government ordinance or resolution, state statute or by adopted
4 rule of regional or state regulatory agencies;

5 ii. Any joint or shared use of public recreational facilities or
6 parks so long as they were not conveyed by a Person with a
7 significant legal or equitable interest in the Developments
8 sought to be aggregated;

9 iii. Any joint or shared use of publicly financed drainage or
10 stormwater management facilities, roadways or water or sewer
11 facilities which were not constructed or financed specifically to
12 accommodate the Developments considered for aggregation;
13 or

14 iv. Design features, financial arrangements, donations, or
15 construction that is specified in and required by an
16 AGREEMENT between the local government and two or more
17 Developments;

18 v. cross access or shared driveways.

19 e. There is a common advertising scheme or promotional plan in
20 effect for the Developments sought to be aggregated. "Common
21 advertising scheme or promotional plan" means any depiction,
22 illustration, or announcement which indicates a shared commercial
23 promotion of two or more Developments as components of a single
24 Development and is designed to encourage sales or leases of
25 property.

26 **C. Exceptions.** This Subsection concerning PROJECT Aggregation is
27 intended to prevent the division of one large PROJECT into several smaller
28 PROJECTS in order to circumvent the purpose of this Article, not to aggregate
29 separate and discrete PROJECTS. Certain activities and circumstances, including
30 the following, shall not be used by the County Engineer to aggregate two or more
31 Developments:

32 1. Activities undertaken leading to the adoption or amendment of any
33 comprehensive plan element described in part II of chapter 163, F.S.

34 2. The sale of unimproved parcels of land, where the seller does not
35 retain significant legal or equitable interest in the future development of the parcels.

36 3. The fact that the same lender has a financial interest, including one
37 acquired through foreclosure, in two or more parcels, so long as the lender is not an
38 active participant in the planning, management, or development of the parcels in
39 which it has an interest.

40 4. Drainage improvements that are not designed to specifically
41 accommodate the Developments sought to be aggregated.

1 5. Use of the same real estate broker to market and sell two or more
2 Developments.

3 6. Agreements to authorize owners or developers to pool impact fees or
4 impact-fee credits, or to enter into front-end agreements or other financing
5 arrangements by which they collectively agree to design, finance, donate, or build
6 such public infrastructure, facilities, or services.

7 7. Nothing herein shall prevent the development of a portion of a parcel
8 owned by one Person where no unified plan of development for the remainder of
9 the parcel, or portion thereof, is evidenced.

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11 **D. Procedure.**

12 1. In order to aggregate two or more Developments pursuant to this
13 subsection, the County Engineer shall provide written notice of intent to aggregate.
14 This notice shall be delivered by certified mail to all affected applicants seeking
15 traffic concurrency approval. The notice of intent to aggregate shall: identify the
16 Developments sought to be aggregated; explain the effect of aggregation on the
17 Developments in the event a final determination has been made by the County to
18 aggregate the Developments; and indicate that an affected current owner may
19 appeal the decision of the County Engineer pursuant to section 15(l) – l of this
20 Code.

21
22 2. If the County Engineer's notice of intent to aggregate is not appealed,
23 or if the Traffic Performance Standards Appeals Board, or a court of competent
24 jurisdiction, ultimately affirms the decision of the County Engineer to aggregate, the
25 Developments shall be considered a single PROJECT for the purposes of traffic
26 concurrency. Once aggregated, the applicant or applicants seeking traffic
27 concurrency approval shall prepare and submit to the County Engineer a single
28 TRAFFIC IMPACT STUDY that analyzes the aggregated Developments as a single
29 PROJECT. The TRAFFIC IMPACT STUDY shall be subject to the review and
30 procedural standards set forth in section 15 (l) of this Code. Such review and
31 procedural standards shall not affect the terms and conditions of an already
32 approved DEVELOPMENT ORDER, a prior AGREEMENT, or both, related to traffic
33 concurrency approval of an aggregated Development.

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35 **E.** This Subsection shall be applied only for the purpose of evaluating the traffic
36 impacts of a PROJECT pursuant to the requirements of this Article 15.

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38 **F.** The application materials used for Traffic Concurrency approval shall be
39 amended to require an applicant to state whether or not the PROJECT is subject to
40 aggregation as set forth in this subsection.

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42 **G.** Portions of this subsection concerning aggregation are based on the
43 aggregation regulations for Developments of Regional Impact, codified in section
44 380.0651, Florida Statutes, and Rule 9J-2, Florida Administrative Code. Unless the

context clearly indicates otherwise, the terms used in this subsection shall have the same meaning and application as those terms that are provided for in the state regulations.

PART 3. - Article 15, Traffic Performance Standards, TABLE 2A-1, is hereby amended as follows:

TABLE 2A-1
TEST ONE
LEVELS OF SIGNIFICANCE

Distance/facility	<= 0.5 miles*	0.5 Miles	I-95
Significance Level	0.5% LOS D	1% LOS D	5% LOS D

TABLE 2A-1
TEST ONE
LEVELS OF SIGNIFICANCE

<u>ALL FACILITIES EXCEPT I-95</u>	<u>I-95 AND THE TURNPIKE</u>
<u>AND THE TURNPIKE</u>	
<u>1.0% LOS D</u>	<u>5% LOS D</u>

~~* Links within one-half (0.5) miles of a Project must be evaluated, regardless of significance, where:~~
~~— 1) the Project is located outside of the Urban Service Area, or~~
~~— 2) the ADT at Buildout will exceed 110% LOS D, or~~
~~— 3) the subject link is a designated hurricane evacuation route.~~

PART 4. CAPTIONS: The captions, section headings, and section designations used in this ordinance are intended for the convenience of users only and shall have no effect in the interpretation of the provisions of this ordinance.

PART 5. REPEAL OF LAWS IN CONFLICT: All local laws and ordinances applying to Palm Beach County or any municipalities within the County in conflict with any provision of this ordinance are hereby repealed to the extent of any conflict.

PART 6. SEVERABILITY: If any section, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held by the Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this ordinance.

PART 7. INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE: The provision of this ordinance shall become and be made a part of the Unified Land Development Code of Palm Beach County, Florida. Textual references to the effective date of this Ordinance may be replaced with the actual date this Ordinance takes effect. The Sections of the ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

PART 8. EFFECTIVE DATE: The provisions of this ordinance shall become effective March 31, 2003, or upon filing with the Department of State, whichever is later.

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2 APPROVED AND ADOPTED by the Board of County Commissioners of Palm
3 Beach County, on the 11 day of March, 2003.
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5 ATTEST:
6 DOROTHY H. WILKEN, Clerk
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10 By: Linda C. Hickman
11 Deputy Clerk
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PALM BEACH COUNTY, FLORIDA,
BY IT'S BOARD OF COUNTY COMMISSIONERS

By: Karen T. Marcus
Karen T. Marcus, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Heather Byrne
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 14 day of
March, 2003

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on March 11, 2003
DATED at West Palm Beach, FL on 4/3/03
DOROTHY H. WILKEN, Clerk
By: Nancy Brown D.C.